

UNITED STATES COURT OF APPEALS

Filed 6/12/96

FOR THE TENTH CIRCUIT

KELLY J. DEHERRERA,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,
acting by and through its Board of Water
Commissioners; W. THOMAS
RICHARDS, individually and in his
official capacity as Superintendent of
Maintenance of the Denver Water
Department; CHARLES CHAPMAN,
individually and in his official capacity as
Transportation Foreman of the Denver
Water Department,

Defendants-Appellees,

DAVID L. SMITH,

Attorney-Appellant.

No. 95-1110
(D.C. No. 90-B-2260)
(D. Colo.)

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before BALDOCK, HOLLOWAY, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Attorney-appellant David L. Smith appeals from a sanction order entered against him by the district court and from that court's later order dismissing the case as per the parties' settlement agreement but refusing to vacate the previously-imposed sanction order.¹

We have reviewed the record in this case and the briefs of the parties. We find that the district court was well within its discretion in imposing sanctions against Mr. Smith. Nor did the district court err in refusing to vacate the previously imposed sanctions. See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S. Ct. 386, 393 (1994). This case does not present the exceptional circumstances which, in some instances, can support the vacatur of previous sanctions. See id.; see also Oklahoma Radio Assocs. v. FDIC, 3 F.3d 1436, 1444-45 (10th Cir. 1993).

Appellees' request for costs and attorney fees on appeal is denied.

¹ Mr. Smith also argues that the district court abused its discretion in refusing to schedule his client's jury trial until October 26, 1994. Standing issues aside, this issue is mooted by the fact of the parties' settlement.

The judgment of the United States District Court for the District of Colorado is
AFFIRMED.

Entered for the Court

Wade Brorby
Circuit Judge